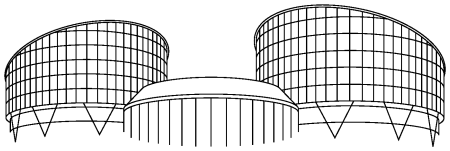

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS v. THE UNITED KINGDOM

(Application no. 7552/09)

JUDGMENT

STRASBOURG

4 March 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of the Church of Jesus Christ of Latter-Day Saints v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ineta Ziemele, *President*,
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 11 February 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 7552/09) against the United Kingdom of Great Britain and Northern Ireland lodged on 29 January 2009 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Church of Jesus Christ of Latter-Day Saints, a religious organisation registered as a private unlimited company in the United Kingdom ("the applicant").

2. The applicant was represented before the Court by Daniel Clifford of Devonshires Solicitors and Professor Mark Hill of Pump Court Chambers, both based in London. The United Kingdom Government ("the Government") were represented by their Agent, Ms A. Sornarajah, Foreign and Commonwealth Office.

3. The applicant alleged that the denial of the exemption from business rates, reserved for buildings used for public religious worship, in respect of its temple at Preston, Lancashire, gave rise to violations of its rights under Article 9 of the Convention and Article 1 of Protocol No. 1, both taken alone and in conjunction with Article 14, and that it was denied an effective remedy for this complaint, in breach of Article 13.

4. On 8 April 2011 the application was communicated to the Government. Subsequently, the Court's examination of the application was adjourned pending the delivery of judgment in *Eweida and Others v. the United Kingdom* (no. 48420/10, ECHR 2013 (extracts)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. The applicant Church has a worldwide membership of over 12 million people, known as Mormons, of whom approximately 180,000 live in the United Kingdom or the Republic of Ireland. Local church congregations are called wards, typically consisting of between 100 and 500 members, and are presided over by a local bishop. Each ward meets in a local chapel. Five to 15 wards constitutes a stake. In each stake one of the larger chapels is designated as a stake centre, where meetings from members of all the wards in the stake can take place.

7. In addition, the applicant Church has two temples in the United Kingdom: one in London and one in Preston, Lancashire. The temple is considered, by the applicant Church's members, to be the house of the Lord and one of the holiest places on earth. Ceremonies or "ordinances" held at the temple carry profound theological significance to Mormons, who believe as a tenet of their faith that only the worthy may be admitted. Only the most devout members of the applicant Church, who hold a current "recommend", are entitled to enter the temples. This is explained in the applicant's published statement of doctrine:

> "WORTHY TO ENTER
>
> You must possess a current recommend to be admitted to the temple ... Only those who are worthy should go to the temple ...
>
> The interview for a temple recommend is conducted privately between the bishop and the Church member concerned. Here the member is asked searching questions about his or her personal conduct, worthiness and loyalty to the Church and its officers. The person must certify that he is morally clean and keeping the Word of Wisdom, paying a full tithing [approximately 10% of income to be paid to the Church], living in harmony with the teachings of the Church and not maintaining any affiliation or sympathy with apostate groups ...
>
> THE PROCESS OF OBTAINING A TEMPLE RECOMMEND IS A BLESSING"

The standards required in order to be granted a recommend include honesty, eschewing abusive conduct, attention to family duties, marital fidelity, the adoption of healthy lifestyle practices and, for divorcees, full compliance with support orders and other legal obligations.

8. The present application concerns the temple at Preston, where congregational services are attended by on average 950 people a week. Under the Local Government Finance Act 1988, a valuation officer must compile and maintain a local rating list for his or her area. Premises included on the list are liable for the payment of business rates. Premises

used for charitable purposes are entitled to charity business rates relief, which cuts the amount of rates payable by 80%. Places of "public religious worship" are wholly exempt from the tax. In 1998 the Preston temple was listed as a building used for charitable purpose and therefore retained a liability to pay only 20% rates, but it was refused the statutory tax exemption reserved for places of "public religious worship". The valuation officer accepted that the stake centre on the same site, with its chapel, associated hall and ancillary rooms, was a "place of public religious worship" which was entitled to exemption. Other buildings on the site, for example a building providing accommodation for missionaries and various ancillary buildings were subject to full business rates. For the financial year 1999/2000, the applicant paid a total of GBP 117,360 in respect of all the rateable buildings on its Preston site.

9. On 5 March 2001 the applicant applied to have the temple removed from the rating list, claiming the benefit of the exemption for places of "public religious worship". On 21 October 2004 the Lancashire Valuation Tribunal granted the application for appeal and determined the temple to be exempt under the statutory provision. On 14 December 2005 the Lands Tribunal overturned that decision. The applicant's appeal to the Court of Appeal was dismissed on 24 November 2006. The applicant then appealed to the House of Lords.

10. The applicant did not raise any arguments under the Convention before the Valuation Tribunal, the Lands Tribunal or the Court of Appeal. However, with the House of Lords' permission, upon their granting leave to appeal, the applicant argued that the legislation in question was incompatible with its rights under Article 9 of the Convention and Article 1 of Protocol No. 1, both taken alone and in conjunction with Article 14.

11. On 30 July 2008 the House of Lords unanimously dismissed the further appeal (*Gallagher (Valuation Officer) v. Church of Jesus Christ of Latter-day Saints* [2008] UKHL 56) holding, on the basis of an earlier judgment (*Church of Jesus Christ of Latter-day Saints v. Henning* [1964] AC 420), that as a matter of domestic law a place of "public religious worship" must be one that is open to the general public. Four of the five Law Lords further dismissed the applicant's arguments under the Convention, holding that the liability to pay 20% business rates on the Temple did not fall within the ambit of Article 9, since Mormons were still free to manifest their religion and since the statutory requirement to be open to the public applied equally to all religious buildings and did not target Mormons in particular. In the words of Lord Hoffmann, with whom Lords Carswell and Mance agreed:

> "13. In order to constitute discrimination on grounds of religion, however, the alleged discrimination must fall 'within the ambit' of a right protected by article 9, in this case, the right to manifest one's religion. In the present case, the liability of the Temple to a non-domestic rate (reduced by 80% on account of the charitable nature of

its use) would not prevent the Mormons from manifesting their religion. But I would not regard that as conclusive. If the legislation imposed rates only upon Mormons, I would regard that as being within the ambit of article 9 even if the Mormons could easily afford to pay them. But the present case is not one in which the Mormons are taxed on account of their religion. It is only that their religion prevents them from providing the public benefit necessary to secure a tax advantage. That seems to me an altogether different matter.

14. For example, I do not think that a Sabbatarian could complain that he was discriminated against because he was unable, on religious grounds, to provide services on the Sabbath and therefore earned less than people of a different religion. A case which in my opinion is very much in point is *M v Secretary of State for Work and Pensions* [2006] UKHL 11; [2006] 2 AC 91, in which a woman would have been able to secure a reduction in her liability for the maintenance of her child if she had been living with a male partner. She was unable to qualify because, on account of her sexual orientation, she chose to live with a female partner. The House of Lords decided that the alleged act of discrimination did not fall within the ambit of article 8 (her right to family life and in particular her right to live with a female partner) because loss of the opportunity to gain a financial advantage was too remote from interference with the right in question. The same seems to me true of this case.

15. Furthermore, I think that even if this can be regarded as a case of indirect discrimination, it was justified. Parliament must have a wide discretion in deciding what should be regarded as a sufficient public benefit to justify exemption from taxation and in my opinion it was entitled to take the view that public access to religious services was such a benefit."

Lord Hope of Craighead agreed with Lord Hoffmann and added:

"31. ... I do not see this case falling within the ambit of article 9. Those who are qualified to worship in the Temple are not prevented from manifesting their religion or their belief by the fact that it is subject to non-domestic rating, the legislation is not directed at Mormons because of what they believe in. It applies generally to all whose religious beliefs and practices prevent them from participating in public religious worship. It is easier to see the case as falling within the ambit of article 1 of Protocol 1, but the second paragraph of that article preserves the right of the State to secure the payment of taxes or other contributions or penalties. In my opinion Parliament's decision as to the scope of the exemption was within the discretionary area of judgement afforded to it by that paragraph. ..."

Lord Scott of Foscote, however, differed from the majority in his concurring opinion and found that the difference in treatment fell within the ambit of Article 9, although he considered that the Article was not violated:

"49. Lord Hoffmann and Lord Hope have expressed the view that the withholding of rating relief from the Temple does not fall within the ambit of article 9. I am uneasy about that conclusion because it is well settled that an allegedly discriminatory act said to be in breach of article 14 does not need to constitute an actual breach of the substantive article within whose ambit the act in question is said to fall. It needs simply to be within the ambit of the substantive article. The case-law as to when an act of discrimination, not being in breach of a particular substantive article, will sufficiently relate to that article in order to be capable of constituting a breach of article 14 does really no more than ask whether the act is within 'the ambit' of the article. There is no precise yardstick; the requirement is left inherently, and perhaps unsatisfactorily, flexible. It seems to me, however, that the levying of taxation on a

place of religious worship, or on those who enter the premises for that purpose, would be capable in particular circumstances of constituting a breach of article 9 and, accordingly, that it is difficult to regard the levying of rates on such premises as otherwise than within the ambit of article 9. I would prefer, therefore, to examine the second issue on the footing that the withholding of rating relief from the Temple does fall within the ambit of article 9 for article 14 purposes.

50. If that is so, there is, as it seems to me, an element of discrimination that requires to be justified. The discrimination consists of the denial of rating relief for the Temple on the ground that, although a place of religious worship, it is not a place of *public* religious worship. No one who is not a Mormon, or who, although a Mormon, does not possess a 'recommend' permitting him or her entry, can enter the Temple .... The 'open doors' requirement in order to enable premises used for religious worship to qualify for rating relief discriminates, adversely to the Mormons, between premises used for religious worship that are open to the public and those that are not. If that is right, the discrimination requires to be justified if it is to escape being held unlawful.

51. I would, for my part, unhesitatingly hold that the grant of rating relief to premises for religious services that are open to the public and the withholding of that relief from premises for religious services which take place behind closed doors through which only a select few may pass is well justifiable and within the margin of appreciation available to individual signatory states. First, states may justifiably take the view that the practice of religion is beneficial both to the individuals who practise it as well as to the community of whom the individuals form part, and that, therefore, relief from rating for premises where religious worship takes place is in the public interest. But, second, states may also recognise that, although religion may be beneficial both to individuals and to the community, it is capable also of being divisive and, sometimes, of becoming dangerously so. No one who lives in a country such as ours, with a community of diverse ethnic and racial origins and of diverse cultures and religions, can be unaware of this. Religion can bind communities together; but it can also emphasise their differences. In these circumstances secrecy in religious practices provides the soil in which suspicions and unfounded prejudices can take root and grow; openness in religious practices, on the other hand, can dispel suspicions and contradict prejudices. I can see every reason why a state should adopt a general policy under which fiscal relief for premises used for religious worship is available where the premises are open to the general public and is withheld where they are not. In my opinion, the withholding of rating relief from the Temple does not constitute a breach of article 14, whether considered in the context of article 9 or, for the same reasons, in the context of article 1 of the 1st Protocol."

II. RELEVANT DOMESTIC LAW

12. The relevant provisions of the Local Government Finance Act 1988 are as follows:

"**Section 41 - Local Rating Lists**

(1) In accordance with this Part the valuation officer for a charging authority shall compile, and then maintain, lists for the authority (to be called its local non-domestic rating lists)...

Section 43 – Occupied Hereditaments Liability

(6) This subsection applies where on the day concerned the ratepayer is a charity or trustees for a charity and the hereditament is wholly or mainly used for charitable purposes (whether of that charity or of that and other charities).

Section 51 – Exemption

Schedule 5 below shall have effect to determine the extent (if any) to which a hereditament is for the purposes of this Part exempt from local non-domestic rating.

Schedule 5, paragraph 11 – Places of religious worship etc.

(1) A hereditament is exempt to the extent that it consists of any of the following:

(a) a place of public religious worship which belongs to the Church of England or the Church in Wales ...or is for the time being certified as required by law as a place of religious worship;

(b) a church hall, chapel hall or similar building used in connection with a place falling within paragraph (a) above for the purposes of the organisation responsible for the conduct of public religious worship in that place."

13. In *Church of Jesus Christ of Latter-day Saints v. Henning* [1964] AC 420, the House of Lords examined a similar complaint about the refusal to grant the exemption for places of "public religious worship" to the Mormon Temple at Godstone, Surrey. Lord Pearce, with whom the majority agreed, explained that from 1601 churches of the Church of England were not subject to rates and that this exemption was extended by the Poor Rate Exemption Act 1833 to "any churches ... meetinghouses, or premises, or any part thereof that shall be exclusively appropriated to public religious worship". He continued:

"By the Act of 1833 the legislature was intending to extend the privileges of exemption enjoyed by the Anglican churches to similar places of worship belonging to other denominations. Since the Church of England worshipped with open doors and its worship was in that sense public, it is unlikely that the legislature intended by the word 'public' some more subjective meaning which would embrace in the phrase 'public religious worship' any congregational worship observed behind doors closed to the public.

I find it impossible, therefore, to hold that the words 'places of public religious worship' includes places which, though from the worshippers' point of view they were public as opposed to domestic, yet in the more ordinary sense were not public since the public was excluded.

... Furthermore, it is less likely on general grounds that Parliament intended to give exemption to religious services that exclude the public, since exemptions from rating, though not necessarily consistent, show a general pattern of intention to benefit those activities which are for the good of the general public. All religious services that open their doors to the public may, in an age of religious tolerance, claim to perform some spiritual service to the general public. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 9

14. The applicant complained that the refusal to its Preston temple of the exemption from business rates accorded to places of public religious worship amounted to discrimination on religious grounds, in breach of Article 14 of the Convention taken in conjunction with Article 9.

Article 9 of the Convention provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. The parties' arguments

a. The Government

15. The Government submitted that, since Article 14 did not confer a free-standing right to non-discrimination, its scope should be kept within boundaries of association closely associated with and directly bearing upon the operation of the other Convention rights. The applicant had not identified any concrete link between the scope of the tax exemption and Article 9; the facts of the case were far removed from the core values and concerns which Article 9 sought to protect. It followed that Article 14 did not apply and that the complaint should be declared inadmissible.

16. Moreover, the Government did not accept that the applicant had established that it was in any significantly different position in relation to the 1988 Act than any other religious organisation. The rule was of general application and concerned only the use made of the building; it did not discriminate on the basis of religious belief. Any of the applicant's places of worship, such as its chapels and stake centres, that were open to the public, had the benefit of the exemption. Other religious organisations also operated a mixture of private and public places of worship. For example, whilst Church of England churches were usually open to the public, its religious

buildings run by closed orders or schools or college chapels might not be. Where such buildings were not open to the public, they were not exempt from rates. There had been no direct discrimination against the applicant Church; the complaint should be characterised as one of indirect discrimination. This was a concept that the Court had recognised as being covered by Article 14 only relatively recently, and it should be cautious not to extend the breadth of Article 14 too far in developing this new principle. It was for the applicant to produce *prima facie* evidence that the effect of a measure or practice was discriminatory, whereupon the burden of proof would shift to the Government to justify the measure. The ill-defined difference of treatment complained of in the present case did not, in the Government's submission, cross this threshold.

17. If, contrary to the foregoing, the Court should conclude that there was *prima facie* discrimination in this case, the Government contended that it was objectively justified. The essential purpose of the legislation was to confine the benefit of the exemption to buildings that offered a public benefit. This decision by Parliament reflected the "general interest of the community" both in raising revenue for public purposes and, more specifically, the "considerations of fairness and public benefit" identified by Lord Pearce in *Henning* (see paragraph 13 above). Lord Scott had identified a second aim pursued by the legislation, observing that in the context of a culturally diverse society such as the United Kingdom, secrecy in religious practice was potentially divisive, and sometimes "dangerously so" (see paragraph 11 above). Parliament had struck the same balance in pursuit of the same legitimate objectives in successive rating statutes since *Henning*, including the 1988 Act. The exemption reflected a policy judgment that the exemption from tax should be based upon a public good, not a private benefit. The revenue raised was itself applied to the public benefit by the local authority. The Government was plainly entitled to draw a distinction between the direct benefit to the public drawn from worshipping within a religious building and the kind of indirect and amorphous benefits alluded to by the applicant.

18. The national authorities were generally afforded a wide margin of appreciation, both in connection with general measures of economic or social strategy and when it came to striking a balance between public interests and religious rights. The applicant had not identified any practical impact on the ability of its members to manifest their religious belief arising out of the requirement to pay rates reduced by 80% on the temple premises. The figures provided by the applicant related to the rates paid in relation to the entire temple site and the amount attributable to the temple building and curtilage was less. These sums had to be seen in the context of the applicant's overall resources, which were considerable. If the Court were to find Article 14 applicable, the proportionality test was clearly satisfied.

b. The applicant

19. The applicant reasoned that the Preston temple and its curtilage, including the vestry or dressing room, utility rooms, office space used for temple administration and refectory used for dining by temple worshippers, ought to be exempt from business rates. However, it emphasised that its dispute with the Government concerned the principle of the exemption in relation to the temple, rather than its precise extent. The tax provisions at issue resulted in differential treatment. They imposed a tax burden on the applicant's temple which was not applied to other religious structures. More importantly, they excluded the applicant's most sacred space and rituals from eligibility for tax exemption, while granting exempt status to the full range of worship for other denominations. Implicit in this differentiation were non-neutral State assumptions, stereotypes and stigmatisation that operated prejudicially against the applicant and those if its members who chose to engage in temple worship.

20. Discrimination on the basis of religion was one of the specifically enumerated grounds identified by Article 14 and could be justified only by very weighty reasons. The Government sought to minimise the discrimination involved in the case by categorising it with other tax provisions and with more general social and economic legislation, in respect of which they contended that the Court should apply a lax standard of supervision. However, this was a reversal of the proper analysis. The point was not that measures affecting religion were subject to a lower degree of scrutiny because tax or other social or economic legislation was involved. Rather, it was that tax and social and economic legislation was generally about non-religious issues, and thus not subject to the stricter scrutiny that differentiations in the religious domain required. The decision whether to exempt the Preston temple from taxation could not be characterised as a mere "general measure of economic or social strategy". While it was obviously a tax measure, it was one that both directly, not incidentally, applied to religious organisations and imposed a disproportionate burden on a specific religious community because of its distinctive beliefs.

21. The applicant contended that its temple worship should be treated with the same respect and accorded the same tax exempt treatment as the worship facilities of the Church of England and other denominations. Temple worship, by its very nature as understood by its believers, required that only those who voluntarily lived by the kinds of commitments made in the temple should be allowed to participate. This was not a case of worship being made private for the purposes of being exclusive or to provide private benefit; it was because the very nature of the worship as understood by its believers required privacy to promote the sacred character of the worship. The relevant analogy would be to insist that the tax exemption be denied to space devoted to confessionals or to the area behind the iconostasis in Orthodox churches. Just as an invitation to the general public to enter these

spaces would disrupt sacred practices, so the nature of temple worship would be destroyed if there were a general requirement that the public be able to sit in. It was inappropriate for State officials to engage in drawing lines that discriminated between religions on the basis of mistaken understandings of the nature and impact of religious practices or merely because such practices are different from those of more familiar religions.

22. Once differential treatment had been established, it was for the respondent State to show that the difference in treatment could be justified. The Government had asserted that the legitimate aim of the provision was to "confine the benefit of the exemption from the general obligation to pay rates to buildings that offer a public benefit". While this was in principle a legitimate aim, the Government had failed to show that public benefit did not similarly flow from the applicant's temple worship. Far from being rooted in objective considerations, the difference in treatment reflected non-objective assumptions about how religion benefits the public. The average attendance at congregational services in the temple at Preston was approximately 950 a week, which would not compare unfavourably with churches of the Church of England and other places of religious worship. The public benefit flowing directly from temple worship included, among other things, extensive participation in charitable and humanitarian endeavours, commitment to good citizenship and careful devotion to family responsibilities. Sacred pledges made in the course of collective worship in the temple, which were then lived out in the world, redounded to the benefit of society at large. The money taken in tax ceased to be available for the religious witness and charitable mission of the applicant and cut into its ability to construct additional worship facilities. While it was true as a general matter that systems of taxation must use broad categories to be workable, the situation was different where, as here, an ostensibly neutral provision imposed a disproportionate and discriminatory burden when applied to the applicant's religion. A discriminatory tax provision could not be justified merely because it was broad.

2. The Court's assessment

a. Admissibility

23. The Court recalls that a religious association may exercise on behalf of its members the rights guaranteed by Article 9 of the Convention, taken alone and in conjunction with Article 14 (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 72, ECHR 2000-VII). In the present case, for the purposes of Article 34 of the Convention, the applicant Church may therefore be considered to have standing to bring the application.

24. For the reasons set out below, the question whether Article 14 applies on the facts of the case is closely linked to the merits of the

complaint. The Court therefore decides to join to issue of the admissibility of the complaint under Article 9 taken in conjunction with Article 14 to the merits.

b. Merits

i. General principles

25. The Court recalls that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see, among many other authorities, *Burden v. the United Kingdom* [GC], no. 13378/05, § 58, 29 April 2008). Thus, a measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe the Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature (see, for example, the *Belgian linguistic case (merits)*, 23 July 1968, § 9, Series A no. 6, pp. 33-34). The Court has also explained that Article 14 comes into play whenever "the subject-matter of the disadvantage ... constitutes one of the modalities of the exercise of a right guaranteed" (see the *National Union of Belgian Police v. Belgium* judgment of 27 October 1975, Series A no. 19, p. 20, § 45), or the measure complained of is "linked to the exercise of a right guaranteed" (see the *Schmidt and Dahlström v. Sweden* judgment of 6 February 1976, Series A no. 21, p. 17, § 39).

26. The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010). "Religion" is specifically mentioned in the text of Article 14 as a prohibited ground of discrimination.

27. Generally, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (*Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008‑). However, this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different (*Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV; see also *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007;

Runkee and White v. the United Kingdom, nos. 42949/98 and 53134/99, § 35, 10 May 2007; *Eweida and Others*, cited above, § 87).

28. Such a difference of treatment between persons in relevantly similar positions - or a failure to treat differently persons in relevantly different situations - is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (*Burden*, cited above, § 60; *Eweida*, cited above, § 88). The scope of this margin will vary according to the circumstances, the subject-matter and the background (*Carson and Others*, cited above, § 61).

29. Finally, in this connection, the Court recalls that, but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (*Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 78, ECHR 2000-XI). The State therefore has a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 116, ECHR 2001-XII; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 97, 31 July 2008; *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 88, 9 December 2010). The Court considers that the obligation under Article 9 incumbent on the State's authorities to remain neutral in the exercise of their powers in the religious domain, and the requirement under Article 14 not to discriminate on grounds of religion, requires that if a State sets up a system for granting tax exemptions on religious groups, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner (see, *mutatis mutandis, Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above § 92).

ii. Application of these principles to the facts of the case

30. The applicant's complaint concerns the rating status of its temple in Preston. This building is considered by the members of the applicant Church to constitute its most sacred centre. It is used as a place of congregational religious worship by those who have established their devotion and been accorded a "recommend" (see paragraphs 6-7 above). In the domestic proceedings, the opinion of the majority of the House of Lords was that the subject-matter of complaint did not come within the ambit of Article 9 of the Convention, with the consequence that Article 14 did not

apply, since the refusal of the tax exemption did not prevent Mormons from manifesting their religion and since the tax exemption rules were applied neutrally to all religious groups and not directed specifically at the applicant Church (see paragraph 11 above). The Court can well understand such an assessment by the national courts of the facts of the present case, although it may be that in certain circumstances issues concerning the operation of religious buildings, including expenses incurred as a result of the taxation status of such buildings, are capable of having an impact on the exercise of the right of members of religious groups to manifest religious belief (see, *mutatis mutandis*, *Association Les Témoins de Jéhovah v. France*, no. 8916/05, §§ 48-54, 30 June 2011). The Court does not, however, need to decide whether, in the particular circumstances, the applicant's complaint about the application to it of the tax exemption legislation falls within the ambit of Article 9, so that Article 14 applies, since for the reasons given below it has come to the conclusion that the claim of discrimination is unfounded on its merits.

31. To establish differential treatment, the applicant Church relied on the argument that, because of the nature of its doctrine, which holds that access to the temple should be restricted to its most devout members who hold a current "recommend", the law which granted a full exemption from rates only to buildings designated for "public religious worship" provided a lower fiscal advantage to the Mormon Church than to such other faiths as to not restrict access to any of their places of worship, even the most sacred. The Court agrees with the Government that the applicant's complaint might, at most, be characterised as one of indirect discrimination. However, on the facts of the case, it is open to doubt whether the refusal to accord an exemption in respect of the applicant Church's temple in Preston gave rise to any difference of treatment of comparable groups, given that the tax law in question applied in the same way to, and produced the same result in relation to, all religious organisations, including the Church of England in respect of its private chapels. Neither is the Court convinced that the applicant Church was in a significantly different position from other churches because of its doctrine concerning worship in its temples, so as to call for differential treatment involving exemption from the contested tax, since other faiths likewise do not allow access of the public to certain of their places of worship for doctrinal reasons.

32. Moreover, in the Court's view, any prejudice caused to the applicant Church by the operation of the tax law was reasonably and objectively justified. In this respect, the Court observes that the rates exemption was first conferred on places of public religious worship by the Poor Rate Exemption Act 1833. The purpose of the exemption, as explained by Lord Pearce in the *Henning* case, was, from the moment it was introduced in 1833, to benefit religious buildings which provided a service to the general public and where the church in question "worshipped with open doors" (see

paragraph 13 above). The House of Lords held that there was a public benefit in granting the general public access to religious services. In this regard Lord Scott of Foscote stated that such openness in religious practice could dispel suspicions and contradict prejudices in a multi-religious society (see paragraph 11 above).

33. According to its settled case-law, the Court leaves to Contracting States a certain margin of appreciation in deciding whether and to what extent any interference is necessary. It is true, as the Government have pointed out, that a wide margin is usually allowed to the State when it comes to general measures of economic or social strategy. This is because, given their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest" (see *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98; see also, for example, *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, Reports 1997-VII). The policy of using rates exemptions to promote the public benefit in enjoying access to religious services and buildings can be characterised as one of general social strategy, in respect of which the State authorities have a wide margin of discretion. However, given the importance of maintaining true religious pluralism, which is inherent in the concept of a democratic society (see *Kokkinakis*, cited above, § 31), the Court must be vigilant to ensure that the measure did not have disproportionate consequences in relation to the applicant Church.

34. In this connection, the Court notes that all the applicant's places of worship that are open to the public, such as its chapels and stake centres, had the benefit of the full exemption from rates. Indeed, the stake centre situated on the same site in Preston as the temple was accepted as a "place of public religious worship", benefiting from the statutory exemption (see paragraph 8 above). The temple itself, which is not open to the public, does not attract the full exemption, but does benefit from an 80% reduction in rates in view of its use for charitable purposes (see paragraph 8 above). This 80% reduction can be seen as reflecting the elements of public benefit which the applicant identifies as flowing from the nature of temple worship. Neither in its objects nor in its effects does the legislation prompting the contested measure go to the legitimacy of Mormon beliefs. The legislation is neutral, in that it is the same for all religious groups as regards the manifestation of religious beliefs in private; and indeed produces exactly the same negative consequences for the officially established Christian Church in England (the Church of England) as far as private chapels are concerned. Moreover, the remaining liability to rates is relatively low, in monetary terms, and the impact on the applicant of the impugned measure cannot be compared to the detriment suffered by the applicants in cases such as *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01,

ECHR 2006-XI, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, 31 July 2008, *Savez crkava "Riječživota" and Others v. Croatia*, no. 7798/08, 9 December 2010.

35. In conclusion, insofar as any difference of treatment between religious groups in comparable situations can be said to have been established in relation to tax exemption of places of worship, such difference of treatment had a reasonable and objective justification. In particular, the contested measure pursued a legitimate aim in the public interest and there was a reasonable relationship of proportionality between that aim and the means used to achieve it. The domestic authorities cannot be considered as having exceeded the margin of appreciation available to them in this context, even having due regard to the duties incumbent on the State by virtue of Article 9 of the Convention in relation to its exercise of its regulatory powers in the sphere of religious freedom. It follows that the Court does not find that the applicant Church has suffered discrimination in breach of Article 14 of the Convention, taken in conjunction with Article 9.

36. In conclusion, and subject to the doubts expressed above, the Court declares the complaint under Article 14 taken in conjunction with Article 9 admissible, but finds no violation.

II. ALLEGED VIOLATIONS OF ARTICLE 9 OF THE CONVENTION TAKEN ALONE AND ARTICLE 1 OF PROTOCOL NO. 1, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14

37. In addition, the applicant complained that the denial of the full rates exemption gave rise to a violation of its members' right to manifest their religious belief, in breach of Article 9 of the Convention taken alone (for the text of the Article, see paragraph 14 above). It further alleged that the levying of the business rate amounted to a deprivation of its possessions, and that this was discriminatory because it applied to the applicant but not to other religious organisations which were able to claim the statutory exemption, in breach of its rights under Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14. Article 1 of Protocol No. 1 provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

38. It may be doubted whether the measure in question gave rise to any interference with the rights of the applicant Church's members under

Article 9. The relatively small impact of the 20% liability to rates on the temple, but not the Church's other places of worship open to the public, distinguishes this case from others where substantial financial detriment has been caused through a State's fiscal policy towards a particular religious group (compare, for example, *Association Les Témoins de Jéhovah v. France*, cited above). In any event, in the light of the above finding that the policy of exempting from rates buildings used for public religious worship fell within the State's margin of appreciation under Articles 14 and 9 taken together, in the Court's view there is no call to examine separately in detail the complaints under Article 9 taken alone and under Article 1 of Protocol No. 1 to the Convention, taken alone and in conjunction with Article 14. This is because, on the facts of this case, it considers that the margin of appreciation to be afforded to the State in respect of those provisions would be similar to, if not more generous than, that afforded under Article 14 taken in conjunction with Article 9.

39. In conclusion, the Court does not find it necessary to examine separately these complaints, either as regards their admissibility or the merits.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. Finally, the applicant alleged that the fact that the House of Lords considered itself bound by earlier precedent, namely the *Henning* judgment, deprived it of an effective remedy under Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

41. The Court refers to its settled case-law to the effect that Article 13 guarantees the existence of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 62, ECHR 2003-V).

42. In the present case, it is clear that an appropriate and effective remedy was available to the applicant Church. Although the applicant chose not to advance its Convention complaints in the High Court and the Court of Appeal, it was granted leave by the House of Lords to advance these new arguments under the Human Rights Act before it. That the outcome was not

favourable for the applicant does not mean that the remedy was in principle ineffective. Compliance with Article 13 does not depend on the certainty of a favourable outcome for an applicant (see, for example, *Ramirez Sanchez v. France* [GC], no. 59450/00, § 159, ECHR 2006-IX).

43. In conclusion, the Court considers that the applicant's complaint under Article 13 of the Convention is manifestly ill-founded and must be rejected as inadmissible under Article 35 §§ 3(a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 13 inadmissible and the complaint under Article 14 taken in conjunction with Article 9 admissible;

2. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 9;

3. *Holds* that there is no need to examine separately the complaints under Article 9 of the Convention and Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14.

Done in English, and notified in writing on 4 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate joint opinion of Judges Ziemele and Hirvela is annexed to this judgment.

I.Z.
F.E.P.

JOINT COUNCURRING OPINION OF JUDGES ZIEMELE AND HIRVELA

1. While we agree in substance with the outcome in this case, we would have preferred to endorse the reasoning of the majority in the House of Lords. Like the majority in the House of Lords, we consider that the facts of this case clearly do not fall within the ambit of Article 9 (paragraph 11) and therefore that no issue arises under Article 14. It is true that this Court has had cases in which tax measures have impacted on the exercise of the right to freedom of religion (paragraph 30). This is not the case here.

2. We believe that it is important that the Court defines the boundaries of the concept of "ambit" where the facts of the case permit. It is simply untenable to keep proceeding on the premise that just about every situation falls within the ambit of any right provided for in the Convention. In the case at hand, once it is accepted that the tax-exemption legislation, while not really falling within the ambit of Article 9, should nevertheless be examined under Article 14 (paragraph 30), the methodology of the Court becomes even less comprehensible. It seems that in this case the Court makes the concept of "ambit" broader than ever and, by doing so, affords independent status to Article 14 which it does not have in the Convention.

3. The tax exemption was a privilege. It was not a right. The application of this privilege did not interfere with the exercise of the right to freedom of religion and we therefore conclude that the facts of the case do not fall within the ambit of Article 9. We would have preferred to declare this case inadmissible.